

**REMARKS**

***Telephonic Interview***

First of all, Applicants' attorney wishes to thank Examiner Koenig for the opportunity, on August 17, 2006, to conduct a telephonic interview on the pending Application and for his careful attention to the matter. During the interview, Michael Stein discussed with the Examiner the blanket transmitting and proprietary encoded format recitations of the claims. These supplemental remarks address aspects of the claims in view of the interview.

***Claims Rejected Under 35 U.S.C. § 103***

Claims 30-33, 36-39, 41-45, 47-50, 57, 60-64, 114-118 and 121-145 are pending in the application. Claims 30-31, 33, 36-38, 41-45, 47, 49, 57, 60, 64, and 114-118 have been amended and new claims 121-145 have been added in order to clarify the claimed subject matter. Claims 1-29, 34-35, 40, 46, 51-56, 58-59, 65-113, and 119-120 have been canceled without prejudice.

**Independent Claim 30:**

Applicant respectfully submits that claim 30, as amended, is patentably distinguished over the combination of Russo, U.S. Pat. No. 5,619,247, in view of Browne, WO 92/22983, and Ottensen, U.S. Pat. No. 5,654,747, cited in the Office Action of June 13, 2006. The cited references, individually or in combination, do not teach "providing a mechanism for the first viewer to preselect desired digital data content for local storage, in a first user station associated with said first user, in said encoded format" "wherein said proprietary encoded format prevents display of said content absent at least one decoding key" and "receiving at a location remote from the first viewer information from the first user station indicating that preselected digital data content has been retrieved from storage, decoded and displayed" as recited in Claim 30.

Russo does not teach "providing a mechanism for the first user to preselect desired digital data content for local storage, in a first user station associated with the first user, in said encoded format." Although Russo discusses "scrambling" signals for transmission and

“de-scrambling” at the subscriber’s terminal facilities, it does not disclose local storage in a proprietary encoded format or decoding after retrieval from local storage.

Browne and Ottensen do not teach “providing a mechanism for the first user to preselect desired digital data content for local storage, in a first user station associated with the first user, in said encoded format.” Ottensen discloses a “modulator/demodulator 62 is preferably employed to modulate or scramble *the decoded analog audio and video signals* prior to being stored on the VCR 44 in accordance with a predetermined security format.” (Ottensen, col. 7, ll. 32-35, emphasis added.) Ottensen also teaches that “the serial number unique to a specific set-top control unit 34 may be used to determine the method and manner of modulating *the decoded analog presentation signal* before being transmitted to the VCR 44,” (Ottensen, col. 7, ll. 41-44, emphasis added) and that “any one of a number of known signal modulation techniques may be employed to scramble *the decoded source information signal* to prevent copying of the downloaded program.” (Ottensen, col. 7, ll. 45-47, emphasis added.) Thus, Ottensen discusses the scrambling and storage of *decoded analog signals*. The claim recites blanket transmitting *and* providing a mechanism to preselect for local storage in a proprietary encoded format.

Thus, Applicants respectfully submit that Claim 30 is patentably defined over the cited art and request withdrawal of the rejection and allowance of Claim 30.

Dependent Claims 31-33, 36-39, 21-45, 47-50, and 114-118:

Claims 31-33, 36-39, 21-45, 47-50, and 114-118 each depend, either directly or indirectly, from independent Claim 30. Applicants respectfully submit that these claims are patentably defined over the cited art for the reasons explained above with respect to Claim 30 and, therefore, request withdrawal of the rejection and allowance of these claims.

Independent Claim 57:

Claim 57 stands rejected as allegedly unpatentable under 35 U.S.C. § 103(a) over Russo in view of Salganicoff, U.S. Pat. No. 5,734,720. Claim 57 as amended recites, *inter alia*, “automatically selecting desired digital data content from the blanket transmitted digital data content according to predetermined criteria based on the popularity of the digital data content.” The rejection is premised on the examiner’s assertion that Russo and Salganicoff

teach these recitations and that it would have been obvious to modify the teachings of Russo with the teachings of Sanganicoff. More particularly, on p. 17 of the Office Action dated June 13, 2006, the Examiner wrote that:

Russo is silent on a criteria based on popularity. Salganicoff teaches using national popularity as a criterion in suggesting programming to a user (col. 48, ll. 27-45). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Russo by selecting based on popularity as taught by Salganicoff in order to expose the user to a variety of programming. (Office Action, p. 17.)

The rejections are improper and should be withdrawn because the Examiner has failed to show where in the prior art one can find a teaching or suggestion of “automatically selecting desired digital data content from the blanket transmitted digital data content according to predetermined criteria based on the popularity of the digital data content.” As the Examiner stated, Russo is silent on the use of a criteria based on popularity. The Examiner’s explanation of why “it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Russo by selecting based on popularity as taught by Salganicoff in order to expose the user to a variety of programming” (Office Action, p. 17) suggests that the examiner is improperly using hindsight to reconstruct the claimed invention using the applicant’s claims as templates. Where does the cited art suggest that Russo should be modified “in order to expose the user to a variety of programming?” Why would the ordinarily-skilled artisan believe that Russo could or should be improved by modifying it in accordance with Salganicoff? With no answers to these questions, the rejections should be withdrawn.

For these reasons, we respectfully ask the Examiner to reconsider and withdraw the rejection of Claim 57.

**Dependent Claims 60-64:**

Claims 60-64 each depend, either directly or indirectly, from independent Claim 57. Applicants respectfully submit that these claims are patentably defined over the cited art for the reasons explained above with respect to Claim 57 and, therefore, request withdrawal of the rejection and allowance of these claims.

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**PATENT**

***Conclusion***

The Examiner is respectfully requested to reconsider the application and to withdraw the outstanding rejections. A Notice of Allowance for the pending claims is earnestly solicited. The Examiner is invited to call Applicant's undersigned attorney at (206) 903-2475 if he wishes to discuss any aspect of the application.

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